

CENTRAL ADMINISTRATIVE TRIBUNAL**BANGALORE BENCH : BANGALORE****ORIGINAL APPLICATION No. 170/01007/2016****W I T H****ORIGINAL APPLICATION No. 170/00237/2017****AND****ORIGINAL APPLICATION No. 170/00750/2017**TODAY, THIS THE 15TH DAY OF DECEMBER, 2017**HON'BLE DR. K.B. SURESH ... MEMBER (J)****HON'BLE SHRI PRASANNA KUMAR PRADHAN ... MEMBER (A)****1. O.A. No. 170/01007/2016**

Dr. Sangeetha Gajanan Bhat,
D/o Gajanan Anant Bhat,
Aged about 42 years,
Working as Chief Accounts Officer,
Zilla Panchayath – Uttara Kannada,
Karwar – 51 301

...Applicant.

(By Advocate Shri M.S. Bhagwat & Shri K. Satish)

Vs.

1. Union of India,
Represented by its Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances & Pensions,
North Block, Central Secretariat,
Sardar Patel Bhavan, Parliament Street,
Sansad Marg, New Delhi – 110 001
2. Union Public Service Commission,
Represented by its Secretary,
Dholpur House, Shahjahan Road,
New Delhi – 110 069.
3. The State of Karnataka,
Represented by its Chief Secretary,
Vidhana Soudha, Bangalore - 560 001
4. The State of Karnataka,
Represented by its Principal Secretary
Department of Personnel Administrative and Reforms,

Vidhana soudha, Bangalore - 560 001

5. Sri Gopalakrishna H.N.
S/o late Narayana Gowda,
Aged about 43 years,
Private Secretary to Urban Development Minister,
Vikasa Soudha,
Bengaluru – 01.
6. P. Vasantha Kumar,
S/o late Sri. Puttamadaiah,
Aged about 43 years,
CAO,
Medical Education Department
Anandrao Circle,
Bengaluru – 01.
7. Meena Nagaraj C.N.
W/o Sri Arjun,
Aged about 44 years,
Director,
Directorate of State Treasury,
Vidhana Soudha, Bangalore – 01.
8. Akram Pasha
S/o Nanne Jan,
Aged about 45 years,
Director,
Directorate of Minorities,
V V Tower, 20th Floor,
Ambedkar Veedhi,
Bangalore – 01.
9. Gangubai Manakar,
D/o Ramesh Manakar,
Aged about 43 years,
Now working as Additional Regional Commissioner,
RC Office, Belagavi – 590 001
10. Kavitha . Mannakeri
W/o Sri Mallikarjun Patil
Aged about 42 years,
Secretary,
Karnataka State Women Commission,
No 107, Cauvery Bhavan,
KHB Building,
Bangalore – 09.
11. M B Rajesh Gowda,
Aged about 47 years,
S/o M J Bettaswamaiah,
Director, Dept. of Agricultural Marketing,
No 16, 2nd Rajabhavan Road,

Bengaluru – 560 001.

12. G.C. Vrushabendra Murthy,
Aged about 56 years,
S/o Chandrashekaraiah,
Working as Deputy Commissioner (Adm)
BBMP, N.R. Square, Bengaluru – 560 001.

13. Shivashankara N
S/o Sri Ninge Gowda
Aged about 43 years,
Private Secretary to Bengaluru Development Minister,
III Floor, Vidhana Soudha,
Bangalore – 01

...Respondents.

(By Shri M.V. Rao, Counsel for Respondent No. 1,
Shri M. Rajakumar, Counsel for Respondent No. 2,
Shri Mahanthesh, Counsel for Respondent No. 3&4 and
Shri K.L. Ramesh, Counsel for Respondent No. 5-13)

2. O.A. No. 170/00237/2017

Sri M.V. Chandrakanth,
S/o Late Venkatashami,
Aged about 49 years,
Waiting for posting in Department of Personnel
And Administrative Reforms,
Vidhana Soudha, Bangalore – 560 001

...Applicant.

(By Advocate Shri M.S. Bhagwat & Shri K. Satish)

Vs.

1. Union of India,
Represented by its Principal Secretary,
Department of Personnel and Training,
Central Secretariat,
North Block, New Delhi – 110 001
2. Union Public Service Commission,
Represented by its Secretary,
Dholpur House, Shahjahan Road,
New Delhi – 110 069.
3. The State of Karnataka,
Represented by its Chief Secretary,
Vidhana Soudha,
Bangalore - 560 001
4. The State of Karnataka,
Represented by its Principal Secretary
Department of Personnel Administrative and Reforms,
Vidhana soudha,
Bangalore - 560 001
5. Smt K.S. Latha Kumari
Age 42 years,

W/o Shri T. Rudrappa,
Working as Secretary,
State Election Commission
Cunningham Road,
Bengaluru – 560 052

...Respondents.

(By Shri S. Prakash Shetty, Counsel for Respondent No. 1,
Shri M. Rajakumar, Counsel for Respondent No. 2,
Shri Mahanthesh, Counsel for Respondent No. 3&4 and
Shri P.A. Kulkarni, Counsel for Respondent No. 5)

3. O.A. No. 170/00750/2017

T. Venugopala Reddy,
Aged about 54 years,
S/o late K. Thimmappa,
Working as Joint Controller,
State Accounts Department &
r/a No. 311, J.R. Makwoods,
3rd Floor, Yellukunte,
Bommanahalli,
Bengaluru – 560 068.

...Applicant.

(By Advocate Shri M.Nagaprasanna)
Vs.

1. Union of India,
Represented by its Secretary,
Department of Personnel &
Training, North Block,
New Delhi – 110 001
2. The Union Public Service Commission,
Through its Secretary,
Dholpur House,
Shahjahan Road,
New Delhi – 110 069.
3. The State of Karnataka,
By its Chief Secretary,
Vidhana Soudha,
Bangalore - 560 001

...Respondents.

(By Shri Ponnanna, Counsel for Respondent No. 3 &
Shri M. Rajakumar, Counsel for Respondent No.2)

ORDER

DR. K.B. SURESH, MEMBER (J):

What are the rights of parties in these contentions? What is the general purpose of effecting promotions in the hierarchy of governance?

2. As we see it the primary purpose of structuring governance is

advancement of public good. Since sovereignty of the nation rests on the people all acts of governance must depend on them. It is not wild swings of public empathy which is in question but the informed opinion of the masses channeled through constitutional stimulus. Thus while ascertaining the empathy of public opinion it necessarily have to be within constitutional province as it is the fundamental law of the land.

3. It is clearly understood that the legislature and through it the executive is the keeper of peoples trust. But the majority-minority stipulations of political process makes it essential that all legislative and executive provinces are marshaled through a constitutional keyhole. The ever vigilant sentinel of this keyhole is the active adjudicator who ensures that, while sovereign expression of the people are honoured, they are applied correctly so that the great edifice of fundamental functioning of State do not get jeopardized.

4. The Civil Service forms the structure of Governance in the concept of State and thus the proximity, juncture and nexus of the suitable only forming this structure is of paramount importance.

5. But, how is public interest demarcated? As political majority, by itself may not be the correct determinant of people's empathy. In certain circumstances of turmoil, the structure of Governance may also have to go against the majority view as well for the goal of attaining non-oppression of minorities. This can only be through being true to the ideas and ideals of our Fundamental Law. Thus the concept of Rule of Law.

6. Therefore, in these cases, how do we optimize and harmonize the will of the people as expressed through executive stipulations and blend it through the mesh of fundamental law?

7. In this context what are the rights of those forming the structure of Governance? Article 309 clarifies this point. **The Hon'ble Apex Court in N.T.**

Devin Katti Vs Karnataka P.S.C. reported in AIR 1990 SC 1233 held that “A person acquires a right to be considered for a post”. The Hon’ble Apex Court in **State of Haryana Vs Piara** reported in AIR 1992 SC 2130 held that “The State should not exploit its employees”.

8. The Hon’ble Apex Court in **Arumugham Vs. State of Tamil Nadu** reported in 1991 (Supplement 1) SCC 2010 held that “withholding of promotion on reasonable grounds is permissible”. Hence held that withholding of promotion on unreasonable grounds would not be permissible.

9. The Hon’ble Apex Court in **Ram Vs. State of Uttar Pradesh** reported in AIR 1991 SC 1818 held that “where a person entitled to promotion was unlawfully denied consideration, retrospective consideration is available to him.

10. The Hon’ble Apex Court in **Shankaran Vs. Union of India** reported in AIR 1991 SC 1612 held “But the decision not to fill up a vacancy has to be taken bonafide for good reasons”

11. The Hon’ble Apex Court in a landmark judgment in **Union of India** and another reported in AIR 2010 SC 1682 held that **in view of Articles 14 and 16 of the Constitution promotion is virtually a fundamental right of employees.**

12. Since it is very significant to the issue at hand Paragraph 19 to 50 are extracted here with unconcealed respect and affirmation.

“19. *In order to resolve the controversy in this case, the relevant statutory provisions may be noted. The respondents being S.C.S. Officers, are seeking promotion to I.A.S. in terms of Rule 4(1)(b) of the relevant recruitment rules. Rule 4(1)(b) of the Indian Administrative Service (Recruitment) Rules, 1954 is set out:-*

“4. *Method of recruitment of the Service (1) xxx xxxx Xxx xxx*

(b) *By promotion of a substantive member of a State Civil Service;"*

20. *In tune with the said method of recruitment, substantive provisions have been made under Rule 8 for recruitment by promotion. Rule 8(1) of the Recruitment Rules in this connection is set out below:-*

"8. Recruitment by promotion or selection for appointment to State and Joint Cadre:-

(1) The Central Government may, on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make, recruit to the Service persons by promotion from amongst the substantive members of a State Civil Service."

21. *Under Rule 9, the number of persons to be recruited under Rule 8 has been specified, but in this case we are not concerned with that controversy.*

22. *The other regulation which is relevant in this case is Rule 5 of Indian Administrative Service (Appointment by Promotion) Regulations, 1955 (hereinafter referred to as, 'the said regulation'). These regulations have been referred to in the earlier part of the judgment. Rule 5(3) of the said regulation, relevant for the purpose of this case, is set out below:-*

"5 (3) The Committee shall not consider the cases of the members of the State Civil Service who have attained the age of 54 years on the first day of January of the year in which it meets:

Provided that a member of the State Civil Service whose name appears in the Select List prepared for the earlier year before the date of the meeting of the Committee and who has not been appointed to the Service only because he was included provisionally in that Select List shall be considered for inclusion in the fresh list to be prepared by the

Committee, even if he has in the meanwhile attained the age of fifty four years:

Provided further that a member of the State Civil Service who has attained the age of fifty-four years on the first day of January of the year in which the Committee meets shall be considered by the Committee, if he was eligible for consideration on the first day of January of the year or of any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the Committee was held during such preceding year or years."

23. Another regulation relevant in this connection is Indian Administrative Service (Cadre) Rules, 1954 (hereinafter referred to as, 'the Cadre Rules')

24. Under Rule 4 of the said Cadre Rules, the strength and composition of the Cadres constituted under Rule 3 shall be determined by regulation made by the Central Government in consultation with the State Government and until such regulations are made, shall be as in force immediately before the commencement of those rules.

25. Rule 4(2) has come up for interpretation in this case and to appreciate its true contents, the said Rule 4(2) is set out below:-

"(2) The Central Government shall ordinarily at the interval of every five years, re-examine the strength and composition of each such cadre in consultation with the State Government or the State Governments concerned and may make such alterations therein as it deems fit.

Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time:

Provided further that State Government concerned may add for a period not exceeding two years and with the approval of the Central Government for a further period not exceeding three years, to a Sate or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts."

26. The main controversy in this case is, whether re-examination on the strength and composition of cadre in the State of Uttar Pradesh had taken place in accordance with the mandate of Rule 4 sub-rule (2).

27. It appears clearly that the authorities who are under a statutory mandate to re-examine the strength and composition of cadre are the Central Government and the concerned State Government. It can be noted in this connection that word 'ordinarily' in Rule 4(2) has come by way of amendment with effect from 1.3.1995 along with said amendment has also come the amendment of 5 years, previously it was 3 years.

28. From the admitted facts of this case, it is clear that Central Government had always thought that cadre review in terms of Rule 4(2) of the cadre Rules was due in 2003. In several letters written by the Central Government, it has been repeatedly urged that the cadre review of I.A.S. cadre of Uttar Pradesh is due on 30th April, 2003. The letter dated 23/24 January, 2003 written to that effect on behalf of the appellant to the Chief Secretary, Government of Uttar Pradesh, Lucknow is set out below:-

"Dear Shri Bagga, The cadre review of IAS cadre of Uttar Pradesh is due

on 30.04.2003. The Supreme Court in 613/1994 (TANSOA vs. Union of India) has stated that the Central Government has the primary responsibility of making cadre reviews and to consider whether it is necessary or not to encadre long existing ex-cadre posts. Delay in conducting the cadre review results in avoidable litigation as officers of the State Civil Service approach the Courts that the delay has stalled their promotional avenues. It is important that the cadre reviews are held on time.

2. I shall, therefore, be grateful if you could look into the matter personally and instruct the concerned officials to sponsor the review proposals in the prescribed proforma, after taking into consideration the requirement of the State Government by 28th February, 2003 to this Department for processing the case further.

With regards"

29. In various subsequent letters, namely dated 5th March, 2003, 3rd September, 2003, 17th September, 2003, 8th December, 2003, the Central Government reiterated its stand that cadre review has to be done by 2003. Admittedly, the Central Government took the aforesaid stand in view of the law laid down by this Court in the case of T.N.

Administrative Service Officers Association and another v. Union of India and others, reported in (2000) 5 SCC 728.

30. It cannot be disputed that the Central Government took the aforesaid stand in view of its statutory responsibility of initiating cadre review as a cadre controlling authority. In fact in the letter dated 29th August, 2005 by Neera Yadav, on behalf of the State of Uttar Pradesh, it has been categorically admitted in paragraph 3 of the said letter that the previous cadre review was done in 1998. The stand is as follows:-

"Thus, the cadre review for alteration was to be done under Rule 4(2) of the Indian Administrative Service Cadre Rules, 1954 as on 30.04.2003. The Department of Personal & Training, through D.O.

letter No.11031/5/2003- AIS-II dated 23.01.2003 requested that State Government to sponsor the review proposal on the prescribed proforma as cadre review as cadre review of Indian Administrative Service, Uttar Pradesh cadre was due on 30.04.2003."

31. In the affidavit of the appellant, filed before Central Administrative Tribunal, the following stand has been categorically taken:-

"It is submitted that the last cadre strength of the IAS cadre of unified cadre of Uttar Pradesh was notified on 30.04.1998. Therefore, as per Rule 4(2) of the IAS (Cadre) Rules, 1954, the next review was due on 30.4.2003."

32. It was also stated that the reference by the State Government to order dated 23.9.2000 was not one of cadre review. It was a reference of the State Government in connection with the bifurcation of Uttar Pradesh and Uttarakhand, pursuant to Uttar Pradesh Reorganization Act, 2000. It was admitted that the I.A.S cadre of Uttarakhand was constituted later i.e. on 21.10.2000.

33. In so far as the State of U.P. was concerned, the State filed an application for a 'better affidavit' before the High Court and in

paragraphs 4 and 5 of the said application the State Government reiterated the reasons for filing a 'better affidavit'. In those paragraphs, the stand of the Central Government was reiterated, namely, that the last cadre review was done in 1998 and the subsequent cadre review under Rule 4(2) of the Cadre Rules was due on 30.04.2003. In the 'better affidavit', which was filed on behalf of the State of Uttar Pradesh before the High Court, in paragraph 8, the stand taken is as follows:-

"..In this view of the matter, since the last "Quinquennial Cadre Review" of the IAS Cadre was held on 30.4.1998, the next "Quinquennial Cadre Review" of the IAS cadre became due on 30.4.2003 as stated by the Cadre Controlling Authority in para 9 of its counter affidavit."

34. *It is thus clear that both the authorities under Rule 4(2) of the Cadre Rules accepted on principle that cadre review in Uttar Pradesh was due in 2003.*

35. *Appearing for the appellants the learned counsel urged that the judgment of the High Court in so far as it seeks to give a retrospective effect to the cadre review is bad inasmuch as the stand of the appellants is that the Notification dated 25.8.2005 makes it explicitly clear that the same comes into force on the date of its publication in the Official Gazette. Relying on the said Notification, it has been urged that since the same has been made explicitly prospective and especially when the Rule in question, namely, Rule 4(2) of the Cadre Rules is expressly prospective in nature, the cadre review exercise cannot be made retrospective. This seems to be the only bone of contention on the part of the appellants.*

36. *However, from the discussion made hereinbefore, the following things are clear:*

(a) *Both the appellants and the State Government in accordance with their stand in the subsequent affidavit accepted that Cadre Review in the State of U.P. was made in 1998 and the next Cadre Review in that State was due in 2003;*

(b) *Neither the appellants nor the State Government has given any plausible explanation justifying the delay in Cadre review;*

(c) *From the materials on record it is clear that the appellant as the Cadre Controlling authority repeatedly urged the State Government to initiate the review by several letters referred to hereinabove;*

(d) *The only reason for the delay in review, in our opinion, is that there was total in-action on the part of the U.P.*

Government and lackadaisical attitude in discharging its statutory responsibility.

37. *The Court must keep in mind the Constitutional obligation of both the appellants/Central Government as also the State Government. Both the Central Government and the State Government are to act as model employers, which is consistent with their role in a Welfare State.*

38. *It is an accepted legal position that the right of eligible employees to be considered for promotion is virtually a part of their fundamental right guaranteed under [Article 16](#) of the Constitution. The guarantee of a fair consideration in matters of promotion under [Article 16](#) virtually flows*

from guarantee of equality under [**Article 14**](#) of the Constitution.

39. [**In The Manager, Government Branch Press and Anr. vs. D.B. Belliappa**](#) - (1979) 1 SCC 477, a three judge Bench of this Court in relation to service dispute, may be in a different context, held that the essence of guarantee epitomized under Articles 14 and 16 is "fairness founded on reason" (See para 24 page 486).

40. It is, therefore, clear that legitimate expectations of the respondents of being considered for promotion has been defeated by the acts of the government and if not of the Central Government, certainly the unreasonable in-action on the part of the Government of State of U.P. stood in the way of the respondents' chances of promotion from being fairly considered when it is due for such consideration and delay has made them ineligible for such consideration. Now the question which is weighing on the conscience of this Court is how to fairly resolve this controversy.

41. Learned counsel for the appellants has also urged that the statutory mandate of a cadre review exercise every five years is qualified by the expression 'ordinarily'. So if it has not been done within five years that does not amount to a failure of exercise of a statutory duty on the part of the authority contemplated under the Rule.

42. This Court is not very much impressed with the aforesaid contention. The word 'ordinarily' must be given its ordinary meaning. While construing the word the Court must not be oblivious of the context in which it has been used. In the case in hand the word 'ordinarily' has been used in the context of promotional opportunities of the Officers concerned. In such a situation the word 'ordinarily' has to be construed in order to fulfill the statutory intent for which it has been used.

43. The word 'ordinarily', of course, means that it does not promote a cast iron rule, it is flexible ([**See Jasbhai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed and Others**](#) - (1976) 1 SCC 671, at page 682 (para 35). It excludes something which is extraordinary or special [[**Eicher Tractors Limited, Haryana vs. Commissioner of Customs, Mumbai**](#) - (2001) 1 SCC 315, at page 319 (para 6)]. The word 'ordinarily' would convey the idea of something which is done 'normally' [[**Krishan Gopal vs. Shri Prakashchandra and others**](#) - (1974) 1 SCC 128, at page 134 (para 12)] and 'generally' subject to special provision [[**Mohan Baitha and others vs. State of Bihar and another**](#) - (2001) 4 SCC 350 at page 354].

44. Concurring with the aforesaid interpretative exercise, we hold that the statutory duty which is cast on the State Government and the Central Government to undertake the cadre review exercise every five years is ordinarily mandatory subject to exceptions which may be justified in the facts of a given case. Surely, lethargy, in-action, an absence of a sense of responsibility cannot fall within category of just exceptions.

45. In the facts of this case neither the appellants nor the State of U.P. has justified its action of not undertaking the exercise within the statutory time frame on any acceptable ground. Therefore, the delayed exercise cannot be justified within the meaning of 'ordinarily' in the facts of this case. In the facts of the case, therefore, the Court holds that there was failure on the part of the authorities in carrying out the timely exercise of cadre review.

46. In a somewhat similar situation, this Court in Union of India and Ors. vs. Vipinchandra Hiralal Shah - (1996) 6 SCC 721, while construing Regulation 5 of the I.A.S. (Appointment by Promotion) Regulations, 1955 held that the insertion of the word 'ordinarily' does not alter the intendment underlying the provision. This Court in that case was considering the provision of Clause (1) of Regulation 5 of the IPS (Appointment by Promotion) Regulations along with other provisions of Regulation 5. The interpretation which this Court gave to the aforesaid two Regulations was that the Selection Committee shall meet at an interval not exceeding one year and prepare a list of members who are eligible for promotion under the list. The Court held that this was mandatory in nature.

47. It was urged before this Court that the insertion of the word 'ordinarily' will make a difference. Repelling the said contention, this Court held that the word 'ordinarily' does not alter the underlying intendment of the provision. This Court made it clear that unless there is a very good reason for not doing so, the Selection Committee shall meet every year for making the selection. In doing so, the Court relied on its previous decision in Syed Khalid Rizvi vs. Union of India - 1993 Supp. (3) SCC 575. In that case the Court was considering Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955 which also contained the word 'ordinarily'. In that context the word 'ordinarily' has been construed as:

".....since preparation of the select list is the foundation for promotion and its omission impinges upon the legitimate expectation of promotee officers for consideration of their claim for promotion as IPS officers, the preparation of the select list must be construed to be mandatory. The Committee should, therefore, meet every year and prepare the select list and be reviewed and revised from time to time as exigencies demand."

48. The same logic applies in the case of cadre review exercise also.

49. Therefore, this Court accepts the arguments of the learned counsel for the appellants that Rule 4(2) cannot be construed to have any retrospective operation and it will operate prospectively. But in the facts and circumstances of the case, the Court can, especially having regard to its power under Article 142 of the Constitution, give suitable directions in order to mitigate the hardship and denial of legitimate rights of the employees. The Court is satisfied that in this case for the delayed exercise of statutory function the Government has not offered any plausible explanation. The respondents cannot be made in any way responsible for the delay. In such a situation, as in the instant case, the directions given by the High Court cannot be said to be unreasonable. In any event this Court reiterates those very directions in exercise of its power under Article 142 of the Constitution of India subject to the only rider that in normal cases the provision of Rule 4(2) of the said Cadre Rules cannot be construed retrospectively.

50. With the aforesaid modification/direction, the appeals filed by the Union of India are disposed of. There shall be no order as to costs."

13. The legal parameters having been examined what is the status of contentions?

OA No. 170/01007/2016

14. This is filed by Smt Sangeetha Gajanan Bhat seeking appointment to IAS on the basis of Draft rules set up for public hearing by the Union Government relying on the decision of the Hon'ble Apex Court.

15. In the cadre of SCS officers the committee had selected the following officers in the following order of merit:

Sl. No.	Name of the Officer (Shri/Ms.)	Date of Birth
1.	B.C. Sateesha	21.05.1974
2.	H. Basavarajendra	26.06.1967
3.	H.N. Gopal Krishna	16.05.1973
4.	Dr. N. Shiva Shankara	20.03.1971
5.	Dr. Arundathi Chandrashekhar	09.07.1969
6.	Dr. M.R. Ravi (SC)	04.07.1966
7.	P.N. Ravindra	31.12.1971
8.	K. Jyothi	20.07.1970
9.	C.N. Meena Nagaraj	07.01.1973
10.	Akram Pasha	01.06.1969
11.	K. Leelavathy	18.05.1966
12.	P. Vasantha Kumar (SC)	04.02.1973
13.	Karee Gowda	21.07.1970
14.	Shivananda Kapashi	20.10.1967
15.	Gangu Bai Ramesh Mankar (SC)	01.07.1972
16.	Kavitha S. Mannikeri	20.07.1974
17.	R.S. Peedapaiah (ST)	23.03.1962
18.	G.C. Vrushabendra Murthy	18.04.1960
19.	Dr. K. Harish Kumar	07.05.1973
20.	M.R. Ravi Kumar	07.05.1972
21.	M.B. Rajesh Gowda	25.11.1970
22.	Mahantesh Bilagi	27.03.1974
23.	K.N. Ramesh	15.05.1970
24.	Patil Yalagouda Shivanagouda	22.07.1972
25.	S. Honnamba	22.09.1972
26.	R. Latha	16.06.1974
27.	K. Srinivas (SC)	31.12.1972
28.	M.S. Archana	19.02.1972
29.	K. Dayananda	26.03.1976
30.	G. Jagadeesha	04.06.1974
31.	K. M. Janaki (SC)	03.07.1971
32.	C. Sathyabhama	01.06.1976

33. *	Rajamma A. Chowda Reddy	02.08.1965
34.	K.S. Latha Kumari (ST)	22.10.1975

16. The person at Serial No. 33 is the applicant in OA No.170/00766/2017 and the person in Serial No. 2 is the applicant in OA No. 170/00623/2017

17. The committee held that there is nothing against any of them in regard to their integrity except Serial No. 33

18. The applicant contends that she is selected into her service as on 28.02.2006 and that she made representation to the 1st respondent seeking for implementation of the recommendation made by the 2nd Administrative Reform Committee.

19. In this regard Paragraph 2.1 and 2.2 of Annexure-A12 seems significant and is extracted herein:

“2.1 It is stated that your identical representation was already received through the Government of India, DoP&T, vide their letter dated 02.02.2017. It was observed that request was made in the representation for withholding of promotion of KAS officers to IAS on the basis of existing Promotion Regulations but through Competitive Written Examination for induction of SCS/Non-SCS officers into IAS by implementing the recommendations of 2nd Administrative Reforms Committee regarding induction into IAS.

2.2 As the existing IAS (Appointment by Promotion) Regulations, 1955 and IAS (Appointment by Selection) Regulations, 1997 do not provide for competitive examination for induction of SCS/Non-SCS officers into IAS and your request relates to consideration for amendment in the said Promotion/Selection Regulations which is within the exclusive domain of the Government of India, Department of Personnel & Training, your representation dated 26.12.2016 was forwarded for necessary action to the Government of India, Department of Personnel & Training, vide Commission’s letter dated 02.03.2017.”

20. At this point of time, paragraph 1 to 7 of Annexure-A13 is significant:

“1. The Government of India in consultation with State Government have determined 3 (Three) vacancies under Non-SCS category for promotion to IAS of Karnataka Cadre by selection for the Select List 2016.

*2. In view of the above, as per the provisions of Regulation (4) of IAS (Appointment by Selection) Regulations, 1997, the State Government shall consider the cases of eligible Non-State Civil Service officers (i.e. Non-KAS) of **Outstanding merit and ability** for appointment to the IAS, against the vacancy arisen between 01.01.2016 to 31.12.2016. Accordingly, the State Government proposes to consider eligible Non-*

SCS officers of Government of Karnataka for appointment to IAS during the year 2017 against 3 (Three) vacancies available for this purpose.

3. Except the officers of the (1) State Police Service (2) State Forest Service and (3) Judicial Services, all other Group-A officers in Non State Civil Service Departments under Government of Karnataka could be considered for selection to the IAS against the available vacancy in the Selection Quota.

4. The Secretariat Administrative Departments are therefore requested to send proposal recommending the names of suitable Non State Civil Service officers of **Outstanding merit and ability** who are within the prescribed age limit and eligible for selection to the IAS as per the eligibility criteria as detailed in enclosure to the letter. **The officer proposed shall be of outstanding merit and ability who has not attained the age of 56 years as on 01.01.2016** i.e., candidate proposed shall not be born earlier to 01.01.1960.

5. Senior officers of the field departments at the level of Additional/Joint heads of department or heads of department in appropriate cases, who are within the specified age limit and are of exceptional merit and ability, would be considered for the purpose. The officers considered for the purpose must have consistently clear and outstanding service records without any blemish, complaint or departmental enquiry/judicial proceedings pending or contemplated against them. Their last 10 years Annual Performance Reports must be available in full and they should have been graded either 'Outstanding' or 'Very good' consistently throughout. In this connection, reference is also drawn to circular No. DPAR 72 SAS 2009, dated 18.2.2010 (copy enclosed). Each proposal shall contain a detailed note on the overall performance of the officer in the department, his merit/achievements in the department, his personality as an officer of the department to merit selection to IAS.

6. The proposal shall be sent with the **approval of the Minister in charge of the portfolio**. The fact of having obtained the approval of the concerned authority shall be specifically mentioned in the proposal. It may be noted that only 3 (Three) vacancies are available for selection during 2017 (vacancy of 2016) and only 15 (fifteen) names can be included in the eligibility list as per Regulation 4(iii) of the IAS Selection Regulations. It is necessary to keep the proposal from each administrative department to the minimum. Hence, all administrative departments are requested to send the name of **only two officers**, per department.

7. It is requested to send proposals to DPAR as per the checklist enclosed in Annexure-II. Last date for submission of proposal by the administrative departments is fixed as one month from the date of reception of this U.O. Note. It may please be noted that incomplete proposals, or proposals received after the due date mentioned above, will not be considered."

21. The State Government in paragraph 23 of their reply clarified the position while, upholding of competitive status among promotee officers has some merit, we had held extensive research and discussion on this matter. We do not want to cloud this issue by opening up the pandoras box now as the issue is in

the active consideration of the Government. Suffice it to say that, therefore, the issue is premature.

22. Besides, the Selection process for SCS officers and Non-SCS officers are different. We looked through the records and find that vide Annexure-A13 this selection is also complete.

23. Hence we have to uphold Annexure-A13 and direct that the 3 officers already selected may be considered for appointment by the concerned authorities. While doing so, the time taken for conclusion of all the litigation may be taken into account and following the Hon'ble Apex Court judgments as stated below, their promotion may be suitably modulated as to give them the benefit of selection from the earliest point of time.

24. But regarding the contention of the applicant herein, it seems to us that it is premature and the Hon'ble Apex Court judgment relied on by her has made a crucial distinction. ***It said that Draft rules may attain primacy of the Government is on the track of implementing it. In other words, the adjudicator can only speed up the process. Such does not seems to be the matrix here.***

25. Therefore applicant's contention may not lie under law.

OA No. 170/00237/2017

26. The applicant claims promotion to IAS in terms of Serial Number 14 and 15 under the post of Assistant Commissioner adjacent to that of Shri G. Jagadeesha.

27. Apparently he secured 1151 marks and Shri Sangappa secured 1152 marks in 2A category. But it was found out later that Shri Sangappa may belong to Lingayath Community and have obtained a position falsely representing that he is a Kuruba.

28. Since a writ appeal is also said to be filed, we had examined the judgment of the Hon'ble High Court of Karnataka with anxious eyes. We are impressed by the clarity of its findings. We also find that even though Shri Sangappa is still in service, the committee has chosen to exclude him from consideration and he does not seem to have challenged it.

29. The State Government, on the other hand, had given back all that he had lost to Shri M.V Chandrakanth. But the only objection put forth by the State Government is that in the position of Assistant Commissioner he has not secured effective placement. But then, that is not his fault and he cannot be prejudiced for fault of another coupled with the inability of the Government to detect the lacunae in this.

30. Therefore we hold that the applicant Shri M.V. Chandrakanth is eligible to be put adjacent to Shri G. Jagadeesha who appears to be Serial No. 30. Necessarily there must be a review committee meeting after holding that the last in the list Serial No. 34 to be kept out of consideration for the time being. If the vacancy position is reconsidered, she may also be put in the zone of consideration. Needless to say that the applicant will have the benefit of retrospective consideration.

31. OA No. 170/00623/2017 will be considered separately.

OA No. 170/00750/2017

32. This case is directly opposite to Smt Sangeetha Gajanan Bhat's case. Even though in Non-SCS they are qualified and selected already without any reference to the Draft rules mentioned by Smt Sangeetha Gajanan Bhat without any doubt they are eligible for promotion and there will be an order to immediately consider them and do whatever is needful to complete the process of their appointment.

33. In the circumstances the following orders are issued:

(1) OA No. 170/01007/2017 stands dismissed even though we congratulate her on raising a most crucial issue in structuring of Governance.

(2) OA No. 170/00237/2017 stands allowed. A review committee meeting will be held as expeditiously as possible to consider him adjacent to Shri G. Jagadeesha in Serial No. 30, if necessary, by keeping out Serial No. 34 or 33 as the case may be as even now her selection is only provisional. Her case will be dealt with separately.

(3) OA No. 170/00750/2017 is allowed with a direction to immediately complete the process of their appointment and grant them benefit from the earliest point it is available to them.

34. In the cumulative result, and since Serial No. 2 will be dealt with separately and Serial No. 33's case is not ripe and Serial No. 34 who may not come in apparently, there should not be any obstacle against the immediate consideration for appointment of all others. Their cases may be given retrospective effect so that they need not suffer for pendency of cases.

35. These cases are thus disposed off as above. No order as to costs.

(PRASANNA KUMAR PRADHAN)
ADMINISTRATIVE MEMBER

(DR. K.B. SURESH)
JUDICIAL MEMBER

/ksk/

Annexures referred to by the applicant in OA No. 170/01007/2016

Annexure A1: True copy of Rank Certificate of the applicant in M.Sc Geology from the University of Mysore

Annexure A2: True copy of Convocation of the applicant in Doctor of Philosophy in Geology from the University of Mysore

Annexure A3: True copy of MBA degree awarded to the applicant by KSOU, Mysore

Annexure A4: True copy of KPSC Notification No. Conf/25/2005-06/PSC dated 28.02.2006

Annexure A5: True copy of letter No. DC PA 01/2012-13 dated 27.11.2012

Annexure A6: True copy of IAS (Appointment by Induction) Regulations, 2013

Annexure A7: True copy of representation of the applicant dated 22.06.2016 addressed to the Secretary to the Government of India.

Annexure A8: True copy of PMP ID No. PMOPG/D/2016/0164450 dated 17.06.2016

Annexure A9: True copy of OM No. DARPG/P/2016/02646 dated 29.08.2016

Annexure A10: True copy of OM No. 23011/1/20160-P.G. Cell dated 16.09.2016

Annexure A11: True copy of letter F.No. 14015/33/2015-AIS (I) dated 29.09.2016

Annexures with MA No. 170/00318/2017

Annexure A12: True copy of letter F. No. 9/8/2017-AIS dated 21.03.2017

Annexure A13: True copy of U.O. Note No. DPAR 2 SAS 2017 dated 06.05.2017

Annexures with MA No. 170/00433/2017

Annexure A14: True copy of representation of the applicant dated 15.09.2017 addressed to the Principal Secretary, DPAR, Government of Karnataka.

Annexure A15: True copy of Revised Scheme in the method of induction of SCS/Non-SCS/SPS/SFoS officers to IAS/IPS/IFoS

Annexure A16: True copy of letter No. 6/8(2)/2016-AIS dated 09.10.2017

Annexures with MA No. 170/00446/2017

Annexure P1: True copy of DoPT letter dated 07.05.2013

Annexure P2: True copy of proposed IAS (Appointment by Selection) Regulation 2013 for Non-SCS officers

Annexure P3: True copy of letter of the State Government dated 31.05.2013

Annexure P4: True copy of order of Central Administrative Tribunal, Bangalore Bench in OA No. 230/2016 dated 01.02.2017

Annexure P5: True copy of order of the Hon'ble High Court in Writ Petition No. 11337/2017 (S-CAT) dated 23.03.2017

Annexure P6: True copy of order of the Hon'ble Supreme Court in SLP No. 15887/2017 dated 04.07.2017

Annexure P7: True copy of Select List 2016 published by the DoPT

Annexures with MA No. 170/00448/2017

Annexure MA1: True copy of DoPT letter dated 07.05.2013

Annexure MA2: True copy of IAS (Appointment by Selection) Regulations, 2013 – For Non SCS Officers.

Annexures referred in reply statement by Respondent No. 5

Annexure R1: True copy of IAS (Appointment by Promotion) Regulations 1955 for SCS cadre

Annexure R2: True copy of IAS (Appointment by Promotion) Regulations 1997 for Non-SCS cadre

Annexure R3: True copy of Hon'ble Apex Court judgment reported in AIR 1990 SC 1251

Annexure R4: True copy of IAS (Appointment by Selection) Regulations 2013 for Non-SCS cadre

Annexure R5: True copy of the order dated 07.09.2017 staying the UO Note dated 06.05.2017

Annexure R6: True copy of the order dated 19.10.2017 staying the further proceedings relating to promotion exercise of SCS candidates

Annexures referred in MA by the applicant

Annexure A17: True copy of IAS (Appointment by Selection) Regulations,

2013

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Annexures referred to by the applicant in OA No. 170/00237/2017

Annexure A1: True copy of Select List dated 29.11.2005

Annexure A2: True copy of the order dated 05.12.2005

Annexure A3: True copy of the order dated 23.01.2006

Annexure A4: True copy of the representation dated 25.01.2006

Annexure A5: True copy of the order dated 31.01.2006 along with translated copy

Annexure A6: True copy of the order dated 01.02.2006 along with translated copy

Annexure A7: True copy of the order dated 09.12.2009 along with translated copy

Annexure A8: True copy of the order dated 17.09.2011 along with translated copy

Annexure A9: True copy of order dated 04.07.2013 along with translated copy

Annexure A10: True copy of order dated 24.03.2017 along with translated copy

Annexure A11: True copy of letter dated 30.03.2017

Annexure A12: True copy of representation dated 31.03.2017

Annexure A13: True copy of Hon'ble Supreme Court judgment reported in (1990) 3 Supreme Court Cases 157

Annexure A14: True copy of letter dated 26.08.2016

Annexure A15: True copy of letter dated 16.12.2016

Annexure A16: True copy of letter dated 19.12.2016

Annexures referred in reply statement by Respondent No. 5

Annexure R1: True copy of IAS (Appointment by Promotion) Regulations 1955

Annexures with MA No. 170/00459/2017

Annexure A17: True copy of letter dated 18.05.2017

Annexure A18: True copy of letter dated 26.05.2017

Annexure A19: True copy of letter F. No. 7/8/2017-AIS dated May, 2017

Annexure A20: True copy of Notification dated 21.07.2017

Annexure A21: True copy of Notification dated 29.07.2017

Annexure A22: True copy of provisional completion certificate along with

translation

Annexure A23: True copy of order of the Hon'ble High Court in Writ Petition No. 1449/2006 dated 13.06.2017

Annexures with written argument note filed by Respondent No.5

Document No.1: Copy of the Government of Karnataka proposal dated 19.12.2016 to UPSC containing the names of 56 SCS officers in the zone of consideration for promotion to IAS cadre

Document No.1: Copy of UPSC selection list dated 09.10.2017 sent to Government of Karnataka for its observations on the recommendations as required under Regulation 6.

Annexures referred to by the applicant in OA No. 170/00750/2017

Annexure A1: True copy of IAS (Appointment by Selection) Regulations, 1997

Annexure A2: True copy of U.O. Note dated 06.05.2017 of the DPAR, Government of Karnataka

Annexure A3: True copy of representation of the applicant and others to the State Government dated 02.11.2017

Annexure A4: True copy of representation of the applicant and others to the 2nd respondent dated 13.11.2017

Annexure A5: True copy of the interim order dated 24.12.2014 in OA No. 1684/2014

Annexure A6: True copy of order dated 13.03.2015 passed by the Hon'ble High Court of Karnataka in Writ Petition No. 59962 of 2014
